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**Introduced by Senator Corbett**

February 26, 2009

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An act to amend Section 2924c of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as introduced, Corbett. Mortgages: foreclosure.

Existing law requires that if a default on a mortgage is cured, as specified, all proceedings instituted prior to that event are to be dismissed or discontinued, as specified.

This bill would make technical, nonsubstantive changes to that provision and related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2924c of the Civil Code is amended to  
2     read:  
3     2924c. (a) (1) Whenever all or a portion of the principal sum  
4     of any obligation secured by deed of trust or mortgage on real  
5     property or an estate for years ~~therein hereafter executed~~ has, prior  
6     to the maturity date fixed in that obligation, become due or been  
7     declared due by reason of default in payment of interest or of any  
8     installment of principal, or by reason of *a* failure of *the* trustor or  
9     mortgagor to pay, in accordance with the terms of that obligation  
10    or of the deed of trust or mortgage, taxes, assessments, premiums  
11    for insurance, or advances made by *the* beneficiary or mortgagee  
12    in accordance with the terms of that obligation or of the deed of

1 trust or mortgage, the trustor or ~~mortgagor or mortgagor~~, his or  
2 her successor in interest in the mortgaged or trust property or any  
3 part thereof, or any beneficiary under a subordinate deed of ~~trust~~  
4 ~~trust~~, or any other person having a subordinate lien or encumbrance  
5 of record ~~thereon~~, *on the real property*, at any time within the  
6 period specified in subdivision (e), if the power of sale ~~therein~~ is  
7 to be exercised, or, otherwise at any time prior to entry of the  
8 decree of foreclosure, may pay to the beneficiary or the ~~mortgagee~~  
9 *mortgagee*, or their successors in interest, respectively, the entire  
10 amount due, at the time payment is tendered, with respect to (A)  
11 all amounts of principal, interest, taxes, assessments, insurance  
12 premiums, or advances actually known by the beneficiary to be,  
13 and that are, in default and shown in the notice of default, under  
14 the terms of the deed of trust or mortgage and the obligation  
15 secured thereby, (B) all amounts in default on recurring obligations  
16 not shown in the notice of default, and (C) all reasonable costs and  
17 expenses, subject to subdivision (c), ~~which that~~ are actually  
18 incurred in enforcing the terms of the obligation, deed of trust, or  
19 mortgage, and trustee's or attorney's fees, subject to subdivision  
20 (d), other than the portion of principal as would not then be due  
21 had no default occurred, and thereby cure the *default*. *If the default*  
22 ~~theretofore existing, and thereupon, is cured~~, all proceedings  
23 ~~theretofore had or instituted prior to that event~~ shall be dismissed  
24 ~~or discontinued~~ *discontinued*, and the obligation and deed of trust  
25 or mortgage shall be reinstated and shall be and remain in force  
26 and effect, the same as if the acceleration had not occurred. This  
27 section does not apply to bonds or other evidences of indebtedness  
28 authorized or permitted to be issued by the Commissioner of  
29 Corporations or made by a public utility subject to the Public  
30 Utilities Code. For the purposes of this subdivision, the term  
31 "recurring obligation" means all amounts of principal and interest  
32 on the loan, or rents, subject to the deed of trust or mortgage in  
33 default due after the notice of default is recorded; all amounts of  
34 principal and interest or rents advanced on senior liens or  
35 leaseholds ~~which that~~ are advanced after the recordation of the  
36 notice of default; and payments of taxes, assessments, and hazard  
37 insurance advanced after recordation of the notice of default. ~~Where~~  
38 *If* the beneficiary or mortgagee has made no advances on defaults  
39 ~~which that~~ would constitute recurring obligations, the beneficiary  
40 or mortgagee may require the trustor or mortgagor to provide

1 reliable written evidence that the amounts have been paid prior to  
2 reinstatement.

3 (2) If the trustor, mortgagor, or other person authorized to cure  
4 the default pursuant to this subdivision does cure the default, the  
5 beneficiary or ~~mortgagee~~ *mortgagee*, or the agent for the  
6 beneficiary or mortgagee, shall, within 21 days following the  
7 reinstatement, execute and deliver to the trustee a notice of  
8 rescission which rescinds the declaration of default and demand  
9 for sale and advises the trustee of the date of reinstatement. The  
10 trustee shall cause the notice of rescission to be recorded within  
11 30 days of receipt of the notice of rescission and of all allowable  
12 fees and costs.

13 No charge, except for the recording fee, shall be made against  
14 the trustor or mortgagor for the execution and recordation of the  
15 notice ~~which~~ *that* rescinds the declaration of default and demand  
16 for sale.

17 (b) (1) The ~~notice~~, *notice* of any default described in this  
18 section, recorded pursuant to Section ~~2924~~, 2924 and mailed to  
19 any person pursuant to Section 2924b, shall begin with the  
20 following statement, printed or typed ~~thereon~~: *on the notice*:

21  
22 “IMPORTANT NOTICE [14-point boldface type if printed or  
23 in capital letters if typed]  
24

25 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE  
26 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD  
27 WITHOUT ANY COURT ACTION, [14-point boldface type if  
28 printed or in capital letters if typed] and you may have the legal  
29 right to bring your account in good standing by paying all of your  
30 past due payments plus permitted costs and expenses within the  
31 time permitted by law for reinstatement of your account, which is  
32 normally five business days prior to the date set for the sale of  
33 your property. No sale date may be set until three months from  
34 the date this notice of default may be recorded (which date of  
35 recordation appears on this notice).

36  
37 This amount is \_\_\_\_\_ as of \_\_\_\_\_  
38 (Date)  
39

40 and will increase until your account becomes current.

1 While your property is in foreclosure, you still must pay other  
2 obligations (such as insurance and taxes) required by your note  
3 and deed of trust or mortgage. If you fail to make future payments  
4 on the loan, pay taxes on the property, provide insurance on the  
5 property, or pay other obligations as required in the note and deed  
6 of trust or mortgage, the beneficiary or mortgagee may insist that  
7 you do so in order to reinstate your account in good standing. In  
8 addition, the beneficiary or mortgagee may require as a condition  
9 to reinstatement that you provide reliable written evidence that  
10 you paid all senior liens, property taxes, and hazard insurance  
11 premiums.

12 Upon your written request, the beneficiary or mortgagee will  
13 give you a written itemization of the entire amount you must pay.  
14 You may not have to pay the entire unpaid portion of your account,  
15 even though full payment was demanded, but you must pay all  
16 amounts in default at the time payment is made. However, you  
17 and your beneficiary or mortgagee may mutually agree in writing  
18 prior to the time the notice of sale is posted (which may not be  
19 earlier than the end of the three-month period stated above) to,  
20 among other things, (1) provide additional time in which to cure  
21 the default by transfer of the property or otherwise; or (2) establish  
22 a schedule of payments in order to cure your default; or both (1)  
23 and (2).

24 Following the expiration of the time period referred to in the  
25 first paragraph of this notice, unless the obligation being foreclosed  
26 upon or a separate written agreement between you and your creditor  
27 permits a longer period, you have only the legal right to stop the  
28 sale of your property by paying the entire amount demanded by  
29 your creditor.

30 To find out the amount you must pay, or to arrange for payment  
31 to stop the foreclosure, or if your property is in foreclosure for any  
32 other reason, contact:

33  
34 \_\_\_\_\_  
35 (Name of beneficiary or mortgagee)

36 \_\_\_\_\_  
37 (Mailing address)

38 \_\_\_\_\_  
39 (Telephone)  
40

1 If you have any questions, you should contact a lawyer or the  
2 governmental agency which may have insured your loan.

3 Notwithstanding the fact that your property is in foreclosure,  
4 you may offer your property for sale, provided the sale is concluded  
5 prior to the conclusion of the foreclosure.

6 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**  
7 **NOT TAKE PROMPT ACTION.** [14-point boldface type if printed  
8 or in capital letters if typed]”

9 Unless otherwise specified, the notice, if printed, shall appear  
10 in at least 12-point boldface type.

11 If the obligation secured by the deed of trust or mortgage is a  
12 contract or agreement described in paragraph (1) or (4) of  
13 subdivision (a) of Section 1632, the notice required herein shall  
14 be in Spanish if the trustor requested a Spanish language translation  
15 of the contract or agreement pursuant to Section 1632. If the  
16 obligation secured by the deed of trust or mortgage is contained  
17 in a home improvement contract, as defined in Sections 7151.2  
18 and 7159 of the Business and Professions Code, which is subject  
19 to Title 2 (commencing with Section 1801), the seller shall specify  
20 on the contract whether or not the contract was principally  
21 negotiated in Spanish and if the contract was principally negotiated  
22 in Spanish, the notice required herein shall be in Spanish. No  
23 assignee of the contract or person authorized to record the notice  
24 of default shall incur any obligation or liability for failing to mail  
25 a notice in Spanish unless Spanish is specified in the contract or  
26 the assignee or person has actual knowledge that the secured  
27 obligation was principally negotiated in Spanish. Unless specified  
28 in writing to the contrary, a copy of the notice required by  
29 subdivision (c) of Section 2924b shall be in English.

30 (2) Any failure to comply with the provisions of this subdivision  
31 shall not affect the validity of a sale in favor of a bona fide  
32 purchaser or the rights of an encumbrancer for value and without  
33 notice.

34 (c) Costs and expenses ~~which~~ *that* may be charged pursuant to  
35 Sections 2924 to 2924i, inclusive, shall be limited to the costs  
36 incurred for recording, mailing, including certified and express  
37 mail charges, publishing, and posting notices required by Sections  
38 2924 to 2924i, inclusive, postponement pursuant to Section 2924g  
39 not to exceed fifty dollars (\$50) per postponement and a fee for a  
40 trustee’s sale guarantee or, in the event of judicial foreclosure, a

1 litigation guarantee. For purposes of this subdivision, a trustee or  
2 beneficiary may purchase a trustee's sale guarantee at a rate  
3 meeting the standards contained in Sections 12401.1 and 12401.3  
4 of the Insurance Code.

5 (d) Trustee's or attorney's fees ~~which~~ *that* may be charged  
6 pursuant to subdivision (a), or until the notice of sale is deposited  
7 in the mail to the trustor as provided in Section 2924b, if the sale  
8 is by power of sale contained in the deed of trust or mortgage, ~~or,~~  
9 *or* otherwise at any time prior to the decree of foreclosure, are  
10 hereby authorized to be in a base amount that does not exceed  
11 three hundred dollars (\$300) if the unpaid principal sum secured  
12 is one hundred fifty thousand dollars (\$150,000) or less, or two  
13 hundred fifty dollars (\$250) if the unpaid principal sum secured  
14 exceeds one hundred fifty thousand dollars (\$150,000), plus  
15 one-half of 1 percent of the unpaid principal sum secured exceeding  
16 fifty thousand dollars (\$50,000) up to and including one hundred  
17 fifty thousand dollars (\$150,000), plus one-quarter of 1 percent of  
18 any portion of the unpaid principal sum secured exceeding one  
19 hundred fifty thousand dollars (\$150,000) up to and including five  
20 hundred thousand dollars (\$500,000), plus one-eighth of 1 percent  
21 of any portion of the unpaid principal sum secured exceeding five  
22 hundred thousand dollars (\$500,000). Any charge for trustee's or  
23 attorney's fees authorized by this subdivision shall be conclusively  
24 presumed to be lawful and valid where the charge does not exceed  
25 the amounts authorized ~~herein~~ *by this subdivision*. For purposes  
26 of this subdivision, the unpaid principal sum secured shall be  
27 determined as of the date the notice of default is recorded.

28 (e) Reinstatement of a monetary default under the terms of an  
29 obligation secured by a deed of ~~trust~~, *trust* or mortgage may be  
30 made at any time within the period commencing with the date of  
31 recordation of the notice of default until five business days prior  
32 to the date of sale set forth in the initial recorded notice of sale.

33 In the event the sale does not take place on the date set forth in  
34 the initial recorded notice of sale or a subsequent recorded notice  
35 of ~~sale~~ *sale*, is required to be given, the right of reinstatement shall  
36 be revived as of the date of recordation of the subsequent notice  
37 of ~~sale~~, *sale* and shall continue from that date until five business  
38 days prior to the date of sale set forth in the subsequently recorded  
39 notice of sale.

1 In the event the date of sale is postponed on the date of sale set  
2 forth in either an initial or any subsequent notice of sale, or is  
3 postponed on the date declared for sale at an immediately preceding  
4 postponement of sale, ~~and,~~ *and* the postponement is for a period  
5 which exceeds five business days from the date set forth in the  
6 notice of sale, or declared at the time of postponement, then the  
7 right of reinstatement is revived as of the date of postponement  
8 and shall continue from that date until five business days prior to  
9 the date of sale declared at the time of the postponement.

10 Nothing ~~contained herein~~ *in this subdivision* shall give rise to a  
11 right of reinstatement during the period of five business days prior  
12 to the date of sale, whether the date of sale is noticed in a notice  
13 of sale or declared at a postponement of sale.

14 Pursuant to the terms of this subdivision, no beneficiary, trustee,  
15 mortgagee, or their agents or successors shall be liable in any  
16 manner to a trustor, mortgagor, their agents or ~~successors or~~  
17 *successors*, any beneficiary under a subordinate deed of trust or  
18 ~~mortgage mortgage~~, or any other person having a subordinate lien  
19 or encumbrance of record ~~thereon~~ *on the property* for the failure  
20 to allow a reinstatement of the obligation secured by a deed of  
21 trust or mortgage during the period of five business days prior to  
22 the sale of the security property, and no such right of reinstatement  
23 during this period is created by this section. Any right of  
24 reinstatement created by this section is terminated five business  
25 days prior to the date of sale set forth in the initial date of sale, and  
26 is revived only as ~~prescribed herein~~ *prescribed*, and only as of the  
27 date set forth ~~herein~~ *forth, in this subdivision*.

28 As used in this subdivision, the term “business day” has the same  
29 meaning as specified in Section 9.